

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6016 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

JAISUKHLAL B. PATEL

Versus

STATE OF GUJARAT

Appearance:

MR NR SHAHANI for Petitioner

M/S PATEL ADVOCATES for Respondent No. 1

NANAVATI ASSOCIATES for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/10/1999

ORAL JUDGEMENT

1. Learned Advocate Mr. N.R. Sahani is appearing on behalf of the petitioner workman and learned Advocate Ms. Patel appearing on behalf of the respondent Nos. 1 and 2 and learned Advocate Nanavati Associates is appearing on behalf of the respondent Company.

2. The facts of the case is that the petitioner

workman was working with the respondent No. 3 company. The respondent No. 3 company who was employer of the petitioner had permitted the petitioner to retire on 11/7/86. The case of the petitioner is that initially the petitioner had applied to the respondent No. 3 company to give him a benefit of Voluntary Retirement Benefit Scheme but the respondent No. 3 company has shown inability to entertain the application filed by the petitioner workman dtd. 24/6/86, and therefore, the petitioner workman had tendered his resignation on 11/7/86 and the said resignation was immediately accepted by the respondent company on 12th Jul, 1986 w.e.f. 11/7/86. The contention which has been raised by the petitioner before this court is that the respondent No. 3 company has arrived at settlement between the representative of the workmen and employer on 13th March, 1986. According to the said settlement, the workmen are entitled to the benefits of Voluntary Retirement Benefits Scheme and various benefits have been incorporated in the said scheme but one condition has been mentioned in the said settlement that this settlement was not applied to those who are not members of the same union. Learned advocate Mr. Sahani has pointed out that such condition is itself is unfair labour practice, arbitrary and also discriminative amongst the workman of the one company. According to Mr. Sahani, respondent company had adopted unfair labour practice and granted benefits to the only members of the Cyanamid employees union and not to other workmen who wants to avail the benefits of Voluntary Retirement Benefits Scheme. The respondent No.3 Company wrote letter dtd. 8/8/86 and pointed out to the workman that because you are not member of the union and your name does not appear in the list of member of the said union, it will not be possible for us to entertain your application. Thereafter, the petitioner workman has approached to the respondent Nos. 1 and 2 by application dtd. 3/12/86 and pointed out that respondent No. 3 company has adopted unfair labour practice as item No. 9 of the Schedule 5th, as unfair labour practice defined under Sec. 2 (ra) of the I.D. Act. Relevant item NO. 9 is of Schedule 5th to show the favouritism or partiality to one set of workers regardless of merit. The copy of the said application dtd. 3/12/86 was sent to the respondent No. 3 company. Learned Advocate Mr. Sahani has also relied on the interim order passed by this Court in S.C.A. NO. 3190/82 dtd. 6/10/82, wherein the question while granting interim relief has been discussed that company will be free to enter into any settlement but it cannot be denied the benefits to the workman and equal treatment merely because the workers belong to different union and thereby bring pressure on then to

join the union which they do not want to join. The Government Labour Officer vide his letter dtd. 27/7/87, addressed to the petitioner workman has pointed out that according to the Item No. 6 of the Scheme, the petitioner workman is not member of the union and therefore, he is not entitled to the benefits of Voluntary Retirement Benefits Scheme under the settlement.

3. In the present case, Affidavit-in-reply is filed by the respondent No.3 company and denied all the averments and allegations made by the petitioner workman in the petition. The petitioner workman has filed Affidavit-in-rejoinder against the reply filed by the respondent No.3 company. Respondent Nos. 1 and 2 have not filed any reply to the petition before this Court.

4. Without considering the merits of the petition, considering the prayer of the petitioner in the petition para 11 (A) which reads as under ;

"Declaring that the respondent No. 3 has indulged in unfair labour practice within the meaning of Item NO.9 of Schedule 5th of I.D. Act, 1947 and further directing the respondent Nos. 1 and 2 to take necessary legal action against the respondent No.3 as provided under Sec. 25-T and Sec.25-U."

Rest of the prayers are not required to go into because of the merit, that whether writ against the company can be issued or not. Without going into the question, if only prayer 11(A) is granted then it will serve the purpose of the workman concerned. Respondent Nos. 1 and 2 have not filed any reply to the petition. Looking to the facts which has been pointed out by the petitioner, prima facie that the settlement which had been arrived at between the respondent No. 3 company and union dtd. 13/3/86, granting benefits to the workman working in the respondent NO. 3 company by Voluntary Retirement Benefits Scheme, the condition which has been mentioned that this settlement shall not apply to those who are not members of Cyanamid Employees Union, such condition is prima facie is denying the legal benefits to the workmen, otherwise, he is entitled to the terms of the settlement. Respondent NO. 3 company decided to give benefits of the said scheme to the members of the union itself amounts to favouritism and favour to the workmen those who are members of the union and it also amounts to partiality to the one set of the workers

regardless of their merits. Whether the petitioner workman is entitled to the benefits of Voluntary Retirement Benefits Scheme, is required to be examined by the respondent No.3 company on merits and whether he satisfies the terms of the settlement or not. But simply the application of the petitioner workman has been rejected on the ground that he is not entitled for the benefits of Voluntary Retirement Benefits Scheme because he is not member of the Union, who has settled the issue with the respondent No.3. Therefore, in light of this fact, I am of the opinion that if respondent Nos. 1 and 2 is directed to investigate and inquire the application dtd. 3/12/86 - Annexure-F to the petition page 25 in respect to the complaint against the respondent No.3 company for adopting unfair labour practice, it will meet end of justice. The Respondent Nos. 1 and 2 has not filed reply and pointed out that this application has been examined on merits the decision has been taken or not. So in absence of reply from respondent Nos. 1 and 2, in the interest of justice, I am directing the respondent Nos. 1 and 2 to decide the application of the petitioner dtd. 3/12/86 - Annexure-F to the petition which is a complaint filed by the petitioner workman against the respondent No. 3 company for adopting unfair labour practice as Item No.9 of Schedule 5 of the I.D. Act. It is further directed to the respondent Nos. 1 and 2 to complete the said exercise of investigating and inquiring to the said complaint of the petitioner workman within a period of three months from the date of receiving certified copy of this order and result of such decision will be communicated to the Advocate of the petitioner. It is further directed that if any adverse decision by the respondent Nos. 1 and 2 then it should have to be given reasoned order in support of their conclusion.

In view of the above directions, this petition is disposed of accordingly. Rule is made absolute to that extent. Interim relief vacated. No order as to costs.

Sd/-

Date : 22/10/99. (H.K. RATHOD, J.)

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